Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Delete, Delete, Delete	GN Docket No. 25-133
Fostering Independent and Diverse Sources of Video Programming	MB Docket No. 24-115
Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard	GN Docket No. 16-142
Amendment of the Commission's Rules Related to Retransmission Consent	MB Docket No. 10-71

COMMENTS OF THE AMERICAN TELEVISION ALLIANCE

The American Television Alliance ("ATVA") submits these comments in response to the Commission's *Public Notice* seeking comment on rules to repeal or modify for the purpose of alleviating unnecessary regulatory burdens.[1] ATVA members must comply with a range of outdated regulations imposing burdens on their businesses and hindering their ability to compete in the modern media marketplace. The Commission seeks comment on regulations in which the costs now outweigh the benefits, regulations that experience has shown no longer serve the public interest, regulations rendered unnecessary by marketplace and technological changes, regulations that form barriers to entry, regulations no longer compliant with a changed legal

[1] *See In Re: Delete, Delete, Delete*, Public Notice, DA 25-219, GN Docket No. 25-133, at 1 (rel. Mar. 12, 2025).

framework, and regulations that are no longer (or never were) constitutional.[2] Each of the regulations listed below falls within one or more of these categories.

Retransmission Consent. ATVA has long been on record urging policymakers to fix the broken retransmission consent regime, characterized by hyperinflationary price increases, blackouts, and anti-consumer carriage terms.[3] As House Majority Leader Scalise has long understood, moreover, a truly deregulatory approach to retransmission consent would involve eliminating a wide variety of Communications Act and Copyright Act provisions governing broadcast distribution.[4] As part of *this* proceeding, the Commission should eliminate the regulatory presumption that bundling complies with the "good faith" retransmission consent negotiation rules.[5]

ATVA and its members have repeatedly described how networks use bundling requirements (and related requirements such as minimum penetration) to both force MVPDs to carry unwanted programming and to raise the price of must-have programming.[6] This makes MVPD service more expensive for consumers and hinders MVPDs from carrying independent

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2 *See id.* at 2–5.

3 *See, e.g.*, Comments of the American Television Alliance at 2, MB Docket No. 24-20 (filed Mar. 8, 2024) (objecting to blackout rebate proposal).

4 *See generally* H.R. 3675, 112th Cong. (2011).

5 *Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd. 5445, 5469 ¶ 56 (2000) (including among "bargaining proposals presumptively . . . consistent with competitive marketplace considerations and the good faith negotiation requirement . . . [p]roposals for carriage conditioned on carriage of any other programming, such as a broadcaster's digital signals, an affiliated cable programming service, or another broadcast station either in the same or a different market").

6 *See, e.g.*, Comments of the American Television Alliance at 2, 4–5, MB Docket No. 24-115 (filed June 6, 2024) (independent programming); Comments of the American Television Alliance at 24 *et seq.*, MB Docket No. 15-216 (filed Dec. 1, 2015) (totality of the circumstances).

programming that they—and consumers—may otherwise prefer. Moreover, networks increasingly offer their own "direct to consumer" distribution services such as Paramount+ and Peacock—without bundling and similar requirements. This raises obvious competition concerns, as a federal court recognized last August in enjoining the Venu streaming joint venture proposed by Disney, Fox, and Warner Bros. Discovery.[7] Specifically, the court had this to say about forced bundling:

- "[I]t is difficult to avoid the conclusion that, on balance, these practices are bad for consumers."[8]
- "These mind-bending costs do not just hurt the wallets of sports-loving consumers by making them pay for non-sports channels they don't want, but also hurt those customers who only want entertainment channels but pay significantly higher costs because they are made to pay for unwatched sports, the most expensive of all content."[9]
- "[B]undling has been uniformly and systematically imposed on each distributor in the live pay TV industry except the [joint venture ("JV")], preventing any other distributor from offering a multi-channel sports-focused streaming service." "Now, *for the first time ever*, the JV Defendants, who are otherwise competitors both in securing the rights to broadcast live sports and in securing viewers for their content, are granting a firm a license to unbundled sports content. That firm is their own JV."[10]

We believe the Commission should prohibit forced bundling and associated practices. In prior filings, ATVA has explained how such a prohibition might work and how the Commission already possesses the statutory authority to take this action.[11] This includes the obligation to "establish regulations to govern the exercise by television broadcast stations of the right of

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7 *FuboTV Inc. v. Walt Disney Co.*, 745 F. Supp. 3d 109, 137, 139 (S.D.N.Y. 2024).

8 *Id.* at 139.

9 *Id.*

10 *Id.* at 137–39.

11 *See* Letter from Michael Nilsson, Counsel, American Television Alliance, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 15-216 & 10-71, at 3–10 (filed Mar. 25, 2016).

retransmission consent . . . and of the right to signal carriage" and to "consider . . . the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier."[12] The Commission could begin to address the anticompetitive harms caused by bundling, however, by eliminating the regulatory presumption *in favor* of bundling.

Must-Carry (§§ 76.55–.62, 76.1601, 76.1607–08, 76.1614, 76.1617). Must-carry requirements burden cable and satellite providers by forcing them to carry programming they would otherwise not carry due to lack of subscriber demand. The burden has practical effects in that cable—particularly small cable operators—and satellite carriers must devote limited capacity to must-carry programming that they could either use for programming their subscribers would prefer or devote to more valuable purposes (such as broadband capacity).[13]

The burden also raises serious constitutional concerns in that it limits cable and satellite providers' editorial discretion in selecting their programming.[14] Nearly thirty years ago, the Supreme Court found the cable must-carry regime to be constitutional, in part, because it perceived cable to constitute a "bottleneck that controls the range of viewer choice."[15] It is

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[12] 47 U.S.C. § 325(b)(3)(A); *see also id.* § 325(b)(3)(C)(ii) (stating that it shall not be bad faith to enter into distribution agreements "based on competitive marketplace considerations"—which indicates that the Commission could prohibit agreements not based on marketplace considerations).

[13] This burden is especially high for small cable operators and satellite carriers. *See, e.g.*, Comments of the American Television Alliance at 17–18, GN Docket No. 16-142 (filed May 9, 2017) ("ATVA 2017 Comments").

[14] *See generally Turner Broad. Sys, Inc. v. FCC*, 512 U.S. 622, 636 (1994) ("There can be no disagreement on an initial premise: Cable programmers and cable operators [and, by extension, satellite providers] engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment.").

[15] *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 227–28 (1997); *id.* at 189 (noting that "must-carry was designed to serve 'three interrelated interests: (1) preserving the benefits of free, over-the-air local broadcast television, (2) promoting the widespread dissemination of information from a multiplicity of sources, and (3) promoting fair competition in the market for television programming'"); *see also Satellite Broad. and Commc'ns Ass'n v. FCC*, 275

difficult to imagine the Court adopting such a finding today in light of the myriad ways in which diverse and local voices can now reach viewers. Must-carry, in other words, is no longer constitutional, and the Commission should urge Congress to eliminate must-carry requirements. In the meantime, the Commission might consider simplifying and modernizing the "good quality signal" rules for satellite and cable.[16] Cable and satellite providers should not be required to devote capacity to carry stations that deliver a signal of sufficient strength but that are essentially unviewable to the subscriber.[17]

Availability of Signals (§§ 76.1700(a)(6), 76.1709). The Commission should eliminate the rules requiring cable operators to keep records concerning the availability of signals. These rules require, for example, that "[t]he operator of every cable television system shall maintain a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements."[18] The list must include "the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990."[19] In today's

F.3d 337, 356 (4th Cir. 2001) (upholding satellite "carry one, carry all" rule as serving two government interests: (1) "the government's interest in preserving a multiplicity of local broadcast outlets for over-the-air viewers, those who do not subscribe to satellite or cable service," and (2) "the government's interest in preventing its grant of a statutory copyright license to satellite carriers from undermining competition in local markets for broadcast television advertising").

16 47 C.F.R. §§ 76.55(c)(3), 76.66(g).

17 *See, e.g.*, Answer of DIRECTV, LLC, MB Docket No. 15-11 (filed July 23, 2015) (explaining that DIRECTV could not carry KSQA because the station transmitted audio in an older "Musicam" format rather than the required AC-3 format).

18 47 C.F.R. § 76.1700(a)(6); *see also id.* § 76.1709.

19 *Id.* § 76.1709(a).

day and age, when the public can check cable channel lineups on the internet, there is simply no justification to require such recordkeeping.

Consumer Complaints. The FCC's Consumer Inquiries and Complaints Center permits consumers to file complaints covering a wide array of issues.[20] MVPDs welcome the opportunity to resolve any and all consumer complaints, since, after all, they want to retain their customers in a highly competitive marketplace. The Commission, however, should have no role regarding complaints unrelated to particular FCC rule violations. For the Commission to oversee responses to complaints that are outside of these parameters creates a substantial drain on MVPD and Commission resources. To focus these resources on addressing allegations clearly within the scope of its authority, the Commission should revise its process to only cover complaints alleging specific rule violations.

In addition, to further promote a more efficient consumer complaint process, the FCC's intake system should require a consumer to contact the company about the issue before filing a complaint with the FCC. Although the Commission's system includes a field prompting the consumer to include whether it has first contacted the company about the particular issue, it is unclear if the system permits complaints to move forward if the answer is "no." Filtering complaints to ensure that MVPDs and other companies had an opportunity to resolve them will streamline the consumer complaint process—ensuring that consumers are satisfied with the outcome and the FCC does not expend valuable resources on issues that are easily resolvable or outside of its jurisdiction.

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[20] *See Consumer Inquiries and Complaints Center*, FCC, https://consumercomplaints.fcc.gov/hc/en-us (last visited Apr. 10, 2025).

ATSC 3.0. The Commission should not adopt new regulatory mandates concerning the adoption of ATSC 3.0.[21] ATVA has always encouraged innovation in the marketplace, including the voluntary ATSC 3.0 standard. Since 2017, we have "support[ed] the idea of 'permissionless innovation'" and believed that broadcasters "should be free to improve and augment the free television service they have offered for decades."[22] From the start, the Commission intended the ATSC 3.0 transition to be "permissive"—that is, "voluntary and market-driven."[23] Yet, to date, the market has yet to embrace this technology.[24] Further, as we have explained, ATSC 3.0 will significantly increase costs for consumers, many of whom will need to replace their television sets, buy new compatible equipment, or subscribe to MVPDs that will have to pay for their own new equipment.[25] We would object to new regulations requiring consumers to undertake such expenses.

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ATVA commends the Commission for initiating a review of its rules to eliminate or modify those that are outdated, unconstitutional, impose unnecessary burdens on industry, or

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21 *See generally* Petition for Rulemaking of the National Association of Broadcasters at 3, GN Docket No. 16-142 (filed Feb. 26, 2025) (requesting that the FCC "establish a timeline to complete the transition" to ATSC 3.0).

22 ATVA 2017 Comments at i.

23 *E.g.*, *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 9930, 9931 ¶ 1 (2017); *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Notice of Proposed Rulemaking, 32 FCC Rcd. 1670, 1683 ¶ 27 (2017).

24 *See, e.g.*, Comments of the American Television Alliance at 2–4, GN Docket No. 16-142 (filed Aug. 8, 2022).

25 *See* ATVA 2017 Comments at 30.

some combination of the three. To achieve its goals, the Commission should adopt the proposals described above.

Respectfully submitted,

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